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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,776	04/09/2004	Bernard St. Denis	08899806US	8834
Dallas F. Smith Gowling, Lafleur, Henderson LLP 160-2600 Elgin Street Ottawa, ON K1P 1C3 CANADA				
EXAMINER				
TRAN, PHUC H				
ART UNIT		PAPER NUMBER		
2616				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/820,776

Applicant(s)

ST. DENIS ET AL.

Examiner

PHUC H. TRAN

Art Unit

2616

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 13-24 and 26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13-24 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-11, 13-24, and 26 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding to claim 1, 10, 14 and 23, the term “set to zero when the fill condition of is above a predetermined level” which doesn't discloses in the specification in such a way as to reasonably convey to one skilled in the relevant art at the time of the application was filed.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-10, 13-23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al. (Pub. No. 20040151184) in view of Milito (Patent No. 5596576).

- With respect to claims 1, 14, Wang teaches a data traffic policer (e.g. apparatus and method of providing rate control at a user access point would consider as data traffic policer as Fig. 1 shows) comprising: a classifier for separating a packet stream into a first class of traffic to be represented by a first transmission rate and a first burst capacity (e.g. the classifiers 202 and 302 in Fig. 1 classify packets in accordance with traffic classes see page 4 paragraph 34 and page 5 paragraph 52), and a second class of traffic to be represented by a second transmission rate and a second burst capacity (e.g. the classifiers 202 and 302 in Fig. 1 classify packets in accordance with traffic classes see page 4 paragraph 34 and page 5 paragraph 52);

a first bucket representing the first transmission rate and the first burst capacity (e.g. Fig. 2 shows the bucket with rate and capacities); and

a second bucket representing the second transmission rate and the second burst capacity (e.g. Fig. 2 shows the bucket with rate and capacities). Wang fails to teach the second bucket being subordinate to the first transmission rate and the first burst capacity of the first bucket. Milito teaches plurality bucket technology of subordinate bucket (see Fig. 6, col. 6, lines 45-60). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to implement the shared limited resource among bucket in communication for controlling data.

- With respect to claims 2, 15, Wang also teaches wherein the first bucket and/or the second bucket are a leaky bucket (e.g. Fig. 2 and 3).

- With respect to claims 3, 5, 7, 16, 18, 20, Wang discloses wherein the first class of traffic and/or the second class of traffic have a discard priority (see page 5, paragraph 49).

- With respect to claims 4-5, 8, 17-18, 21, Wang discloses wherein the first class of traffic and/or the second class of traffic has an emission priority (see page 4 paragraph 38).

- With respect to claims 6, 9, 19, 22, Wang also discloses wherein the first bucket and/or the second bucket are a token bucket (see page 4, paragraph 36).

- With respect to claims 10, 23, Wang teaches wherein the second bucket for the second class of traffic is one of a plurality of buckets for a plurality of traffic classes representing transmission rates and burst capacities (e.g. Fig. 2 shows buckets with different rates), but fails to teach the plurality of buckets being subordinate to the first transmission rate and the first burst capacity. Milito teaches plurality bucket technology of subordinate bucket (see Fig. 6, col. 6, lines 45-60). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to implement the shared limited resource among bucket in communication for controlling data.

- With respect to claims 13, 26, Wang teaches wherein the second transmission rate comprises a weight (e.g. the bandwidth teaches in each bucket as showing in Fig. 2 and 3).

- With respect to claim 14, a method of data traffic policing comprising the steps of separating a packet stream into a first class of traffic to be represented by a first transmission rate and a first burst capacity, and a second class of traffic to be represented by a second transmission rate and a second burst capacity; representing a first class of traffic class as a first transmission rate and a first burst capacity; and representing a second class of traffic as a second transmission rate and a second burst capacity, the representation of the second class of traffic being subordinate to the first transmission rate and the first burst capacity and the second transmission

rate being set to zero when a fill condition of the representation of the first class of traffic is above a predetermined level.

Response to Amendment

5. Applicant's arguments with respect to claims 1-11, 13-24, and 26 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Chandran (U.S. Patent No. 6801500) discloses method and apparatus for providing reserved rates to multiple flows on a network interface.

8. Lee et al. (U.S. Patent No. 7236458) discloses method for monitoring traffic in packet switched network.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHUC H. TRAN whose telephone number is (571)272-3172. The examiner can normally be reached on M-F (8-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CHI PHAM can be reached on (571) 272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PHUC H TRAN/
Examiner, Art Unit 2616

/Chi H Pham/
Supervisory Patent Examiner, Art Unit 2616